



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB0881

by Rep. Margo McDermed

SYNOPSIS AS INTRODUCED:

820 ILCS 112/10
820 ILCS 112/28 new
820 ILCS 112/30

Amends the Equal Pay Act of 2003. Provides that it is unlawful for an employer to require an employee to sign a contract or waiver that would prohibit the employee from disclosing or discussing the employee's wage or salary; however, an employer may prohibit a human resources employee, a supervisor, or any other employee whose job responsibilities require or allow access to other employees' wage or salary information from disclosing such information without prior written consent from the employee whose information is sought or requested. Provides that it is unlawful for an employer to seek the wage or salary history of a prospective employee from the prospective employee or a current or former employer or to require that a prospective employee's prior wage or salary history meet certain criteria, with some exceptions. Provides that an employer against whom an action is brought alleging a violation of the Act's prohibition against gender-based wage differentials and who, within the previous 3 years and prior to the commencement of the action, has completed a self-evaluation of the employer's pay practices in good faith and can demonstrate that reasonable progress has been made toward eliminating wage differentials based on gender for the same or substantially similar work in accordance with that evaluation shall have an affirmative defense to liability. Provides that an employer who cannot demonstrate that the evaluation was reasonable in detail and scope shall not be entitled to an affirmative defense, but shall not be liable for any civil fine in excess of: (1) \$500 per employee affected, if the employer has fewer than 4 employees; or (2) \$2,500 per employee affected, if the employer has 4 or more employees. Provides that if an employee recovers unpaid wages under the Act and also files a complaint or brings a sex discrimination action under the federal Fair Labor Standards Act of 1938 that results in additional recovery under federal law for the same violation, the employee shall return to the employer the amounts recovered under State law or the amounts recovered under federal law, whichever is less.

LRB101 06243 TAE 51269 b

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Equal Pay Act of 2003 is amended by changing
5 Sections 10 and 30 and by adding Section 28 as follows:

6 (820 ILCS 112/10)

7 Sec. 10. Prohibited acts.

8 (a) No employer may discriminate between employees on the
9 basis of sex by paying wages to an employee at a rate less than
10 the rate at which the employer pays wages to another employee
11 of the opposite sex for the same or substantially similar work
12 on jobs the performance of which requires equal skill, effort,
13 and responsibility, and which are performed under similar
14 working conditions, except where the payment is made under:

15 (1) a seniority system;

16 (2) a merit system;

17 (3) a system that measures earnings by quantity or
18 quality of production; or

19 (4) a differential based on any other factor other
20 than: (i) sex or (ii) a factor that would constitute
21 unlawful discrimination under the Illinois Human Rights
22 Act.

23 No employer may discriminate between employees by paying

1 wages to an African-American employee at a rate less than the
2 rate at which the employer pays wages to another employee who
3 is not African-American for the same or substantially similar
4 work on jobs the performance of which requires equal skill,
5 effort, and responsibility, and which are performed under
6 similar working conditions, except where the payment is made
7 under:

8 (1) a seniority system;

9 (2) a merit system;

10 (3) a system that measures earnings by quantity or
11 quality of production; or

12 (4) a differential based on any other factor other
13 than: (i) race or (ii) a factor that would constitute
14 unlawful discrimination under the Illinois Human Rights
15 Act.

16 An employer who is paying wages in violation of this Act
17 may not, to comply with this Act, reduce the wages of any other
18 employee.

19 Nothing in this Act may be construed to require an employer
20 to pay, to any employee at a workplace in a particular county,
21 wages that are equal to the wages paid by that employer at a
22 workplace in another county to employees in jobs the
23 performance of which requires equal skill, effort, and
24 responsibility, and which are performed under similar working
25 conditions.

26 (b) It is unlawful for any employer to interfere with,

1 restrain, or deny the exercise of or the attempt to exercise
2 any right provided under this Act. It is unlawful for any
3 employer to discharge or in any other manner discriminate
4 against any individual for inquiring about, disclosing,
5 comparing, or otherwise discussing the employee's wages or the
6 wages of any other employee, or aiding or encouraging any
7 person to exercise his or her rights under this Act. It is
8 unlawful for an employer to require an employee to sign a
9 contract or waiver that would prohibit the employee from
10 disclosing or discussing the employee's wage or salary.
11 However, an employer may prohibit a human resources employee, a
12 supervisor, or any other employee whose job responsibilities
13 require or allow access to other employees' wage or salary
14 information from disclosing such information without prior
15 written consent from the employee whose information is sought
16 or requested.

17 (b-5) It is unlawful for an employer to seek the wage or
18 salary history of a prospective employee from the prospective
19 employee or a current or former employer or to require that a
20 prospective employee's prior wage or salary history meet
21 certain criteria. This subsection does not apply if:

22 (1) the prospective employee's wage or salary history
23 is a matter of public record;

24 (2) the prospective employee is a current employee of
25 the employer and is applying for a position with the same
26 employer; or

1 (3) a prospective employee has voluntarily disclosed
2 such information.

3 An employer may seek or confirm a prospective employee's
4 wage or salary history after an offer of employment, with
5 salary or wage, has been negotiated and made to the prospective
6 employee.

7 (c) It is unlawful for any person to discharge or in any
8 other manner discriminate against any individual because the
9 individual:

10 (1) has filed any charge or has instituted or caused to
11 be instituted any proceeding under or related to this Act;

12 (2) has given, or is about to give, any information in
13 connection with any inquiry or proceeding relating to any
14 right provided under this Act; or

15 (3) has testified, or is about to testify, in any
16 inquiry or proceeding relating to any right provided under
17 this Act.

18 (Source: P.A. 100-1140, eff. 1-1-19.)

19 (820 ILCS 112/28 new)

20 Sec. 28. Self-evaluation.

21 (a) An employer against whom an action is brought alleging
22 a violation of subsection (a) of Section 10 and who, within the
23 previous 3 years and prior to the commencement of the action,
24 has completed a self-evaluation of the employer's pay practices
25 in good faith and can demonstrate that reasonable progress has

1 been made toward eliminating wage differentials based on gender
2 for the same or substantially similar work on jobs the
3 performance of which requires equal skill, effort, and
4 responsibility, and which are performed under similar working
5 conditions, in accordance with that evaluation, shall have an
6 affirmative defense to liability under subsection (a) of
7 Section 10. For purposes of this subsection, an employer's
8 self-evaluation may be of the employer's own design, so long as
9 it is reasonable in detail and scope in light of the size of
10 the employer, or may be consistent with standard templates or
11 forms issued by the Department.

12 (b) An employer who has completed a self-evaluation in good
13 faith within the previous 3 years and prior to the commencement
14 of the action and can demonstrate that reasonable progress has
15 been made toward eliminating wage differentials based on gender
16 for the same or substantially similar work on jobs the
17 performance of which requires equal skill, effort, and
18 responsibility, and which are performed under similar working
19 conditions, but cannot demonstrate that the evaluation was
20 reasonable in detail and scope, shall not be entitled to an
21 affirmative defense under this subsection, but shall not be
22 liable for any civil fine for a violation of this Act in excess
23 of:

24 (1) \$500 per employee affected, if the employer has
25 fewer than 4 employees; or

26 (2) \$2,500 per employee affected, if the employer has 4

1 or more employees.

2 (c) Evidence of a self-evaluation or remedial steps
3 undertaken in accordance with this Section shall not be
4 admissible in any proceeding as evidence of a violation of this
5 Act.

6 (d) An employer who has not completed a self-evaluation
7 shall not be subject to any negative or adverse inference as a
8 result of not having completed a self-evaluation.

9 (e) An employer who uses the affirmative defense under this
10 Section is not precluded from using any other affirmative
11 defense under this Act.

12 (820 ILCS 112/30)

13 Sec. 30. Violations; fines and penalties.

14 (a) If an employee is paid by his or her employer less than
15 the wage to which he or she is entitled in violation of Section
16 10 of this Act, the employee may recover in a civil action the
17 entire amount of any underpayment together with interest and
18 the costs and reasonable attorney's fees as may be allowed by
19 the court and as necessary to make the employee whole. At the
20 request of the employee or on a motion of the Director, the
21 Department may make an assignment of the wage claim in trust
22 for the assigning employee and may bring any legal action
23 necessary to collect the claim, and the employer shall be
24 required to pay the costs incurred in collecting the claim.
25 Every such action shall be brought within 5 years from the date

1 of the underpayment. For purposes of this Act, "date of the
2 underpayment" means each time wages are underpaid.

3 (b) The Director is authorized to supervise the payment of
4 the unpaid wages owing to any employee or employees under this
5 Act and may bring any legal action necessary to recover the
6 amount of unpaid wages and penalties and the employer shall be
7 required to pay the costs. Any sums recovered by the Director
8 on behalf of an employee under this Section shall be paid to
9 the employee or employees affected.

10 (c) Employers who violate any provision of this Act or any
11 rule adopted under the Act are subject to a civil penalty for
12 each employee affected as follows:

13 (1) An employer with fewer than 4 employees: first
14 offense, a fine not to exceed \$500; second offense, a fine
15 not to exceed \$2,500; third or subsequent offense, a fine
16 not to exceed \$5,000.

17 (2) An employer with 4 or more employees: first
18 offense, a fine not to exceed \$2,500; second offense, a
19 fine not to exceed \$3,000; third or subsequent offense, a
20 fine not to exceed \$5,000.

21 An employer or person who violates subsection (b) or (c) of
22 Section 10 is subject to a civil penalty not to exceed \$5,000
23 for each violation for each employee affected.

24 (d) In determining the amount of the penalty, the
25 appropriateness of the penalty to the size of the business of
26 the employer charged and the gravity of the violation shall be

1 considered. The penalty may be recovered in a civil action
2 brought by the Director in any circuit court.

3 (e) If an employee recovers unpaid wages under this Section
4 and also files a complaint or brings an action under 29 U.S.C.
5 Section 206(d) that results in additional recovery under
6 federal law for the same violation, the employee shall return
7 to the employer the amounts recovered under this Section or the
8 amounts recovered under federal law, whichever is less.

9 (Source: P.A. 99-418, eff. 1-1-16.)